

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2002-092663

09/26/2003

HONORABLE MICHAEL D. JONES

CLERK OF THE COURT
P. M. Espinoza
Deputy

FILED: _____

ADAM PORTER

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2196 E APACHE #102-192
TEMPE AZ 85281

v.

VICTOR MENDEZ, et al.

JOSE LUIS PENALOSA

OFFICE OF ADMINISTRATIVE
HEARINGS

MINUTE ENTRY

Pursuant to A.R.S §12-910(e) this court may review administrative decisions in special actions and proceedings in which the State is a party:

The court may affirm, reverse, modify or vacate and remand the agency action. The court shall affirm the agency action unless after reviewing the administrative record and supplementing evidence presented at the evidentiary hearing the court concludes that the action is not supported by substantial evidence, is contrary to law, is arbitrary and capricious or is an abuse of discretion.

The scope of review of an agency determination under administrative review places the burden upon the Plaintiff to demonstrate that the hearing officer's decision was arbitrary, capricious, or involved an abuse of discretion.¹ The reviewing court may not substitute its own

¹ *Sundown Imports, Inc. v. Ariz. Dept. of Transp.*, 115 Ariz. 428, 431, 565 P.2d 1289, 1292 (App. 1977); *Klomp v. Ariz. Dept. of Economic Security*, 125 Ariz. 556, 611 P.2d 560 (App. 1980); also see *Caretto v. Arizona Dept. of Transp.* 192 Ariz. 297, 965 P.2d 31 (App. 1998).

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2002-092663

09/26/2003

discretion for that exercised by the hearing officer,² but must only determine if there is any competent evidence to sustain the decision.³

Only where the administrative decision is unsupported by competent evidence may the trial court set it aside as being arbitrary and capricious.⁴ In determining whether an administrative agency has abused its discretion, we review the record to determine whether there has been "unreasoning action, without consideration and in disregard for facts and circumstances; where there is room for two opinions, the action is not arbitrary or capricious if exercised honestly and upon due consideration, even though it may be believed that an erroneous conclusion has been reached."⁵

This matter has been under advisement and the Court has considered and reviewed the record of the proceedings from the administrative hearing, exhibits made of record and the Memoranda submitted.

The facts in the case at hand are simple and undisputed. Plaintiff, Adam Porter, submitted an application for a driver's license to the Motor Vehicle Division (hereinafter "MVD"), a department of Defendant, the Arizona State Department of Transportation (hereinafter "ADOT"). The MVD denied Plaintiff's application and refused to issue Plaintiff a driver's license because he failed to list his Social Security number on the application. Plaintiff does not have a Social Security number because he believes that it would lead to the receiving of unearned benefits, thus violating a decree of the Holy Bible. Specifically, Plaintiff cites two scriptures: 2 Thessalonians 3:10,⁶ and 1 Timothy 5:8.⁷ II Thessalonians 3:10 reads:

For even when we were with you, this we commanded you,
that if any would not work, neither should he eat.

1 Timothy 5:8 reads:

But if any provide not for his own, and specially for those of
his own house, he hath denied the faith, and is worse than an
infidel.

² *Ariz. Dept. of Economic Security v. Lidback*, 26 Ariz. App. 143, 145, 546 P.2d 1152, 1154 (1976).

³ *Schade v. Arizona State Retirement System*, 109 Ariz. 396, 398, 510 P.2d 42, 44 (1973); *Welsh v. Arizona State Board of Accountancy*, 14 Ariz. App. 432, 484 P.2d 201 (1971).

⁴ *City of Tucson v. Mills*, 114 Ariz. 107, 559 P.2d 663 (App. 1976).

⁵ *Tucson Public Schools, District No. 1 of Pima County v. Green*, 17 Ariz. App. 91, 94, 495 P.2d 861, 864 (1972), as cited by *Petrus v. Arizona State Liquor Board*, 129 Ariz. 449, 452, 631 P.2d 1107, 1110 (App. 1981).

⁶ King James version.

⁷ *Id.*

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2002-092663

09/26/2003

On August 15, 2002, Plaintiff took the matter before an administrative law judge, Judge Charles Adornetto, who sustained the denial of Plaintiff's driver's license. Plaintiff now brings the matter before this court for judicial review of the administrative decision.

The first issue Plaintiff raises is whether the Secretary of Health and Human Services has promulgated the appropriate regulations authorizing the State of Arizona and the MVD to require Plaintiff to provide a Social Security number as a condition for obtaining a driver's license. It is of no legal consequence that the Secretary of the U.S. Department of Health and Human Services has not promulgated any regulations to carry the federal welfare reform legislation into effect. 42 U.S.C. §666(A) provides:

In order to satisfy section 654(20)(A) of this title, each State must have in effect laws requiring the use of the following procedures, consistent with this section and with regulations of the Secretary, to increase the effectiveness of the program which the State administers under this part.

[emphasis added]

It is clear that the plain language of this subsection merely requires that state laws be consistent with any regulations that the Secretary *may* promulgate.

The second issue is whether 42 U.S.C. §666(A)(13)(A) mandates that Plaintiff apply for and obtain a Social Security number as a condition for obtaining a driver's license, and I conclude that it does. To determine the meaning of a statute, a court must review "the particular statutory language at issue, as well as the language and design of the statute as a whole."⁸ Statutes must be construed in view of the purposes they are intended to accomplish and the evils they are designed to remedy.⁹ Therefore, we must examine the design of the statute. Child Support Enforcement programs were designed to assist with the collection of child support across state lines.¹⁰ An important tool assisting states to work together and with the federal government to track absent parents is the Federal Parent Locator Service ("FPLS").¹¹ Congress mandated that the FPLS contain an individual's address, place of employment, and the Social Security number.¹² The states were also required to collect social security numbers from applicants for different types of commercial and professional licenses.¹³ Technical corrections to Personal Responsibility and Work Opportunity Reconciliation Act in 1997 furthered this public

⁸ *Walker v. Bain*, 257 F.3d 660, 666-67 (6th Cir.2001) (quoting *K Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 291, 108 S.Ct. 1811, 100 L.Ed.2d 313 (1988)).

⁹ *Senor T's Restaurant v. Industrial Commission of Arizona*, 131 Ariz. 360, 363, 641 P.2d 848, 851 (Ariz., 1982); also see *State v. Berry*, 101 Ariz. 310, 419 P.2d 337 (App., 1966).

¹⁰ Pub.L. No. 93-647 § 454(9)(B)-(C), 88 Stat. 2337, 2355 (codified as 42 U.S.C. § 654(9)(B)-(C) (2001)).

¹¹ Pub.L. No. 93-647 § 453, 88 Stat. 2337, 2353-54 (codified as 42 U.S.C. § 653 (2001)).

¹² Pub.L. No. 98-378 § 19(a), 98 Stat. 1305, 1322 (codified as 42 U.S.C. § 653(a)(2)(A) (2001)).

¹³ Pub.L. No. 104-193 § 317, 110 Stat 2105 (codified as 42 U.S.C. § 666(a)(13) (2001)).

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2002-092663

09/26/2003

policy by applying the Social Security number collection requirement to all drivers' license applications.¹⁴ 42 U.S.C. §666(A)(13(A) states in relevant part:

[E]ach State must have in effect laws requiring the use of the following procedures, consistent with this section and with regulations of the Secretary: [p]rocedures requiring that the social security number of any applicant for a ... driver's license ... be recorded on the application.

[emphasis added]

Hence, Congress has established a strong public policy for utilizing a federal identifier – a person's Social Security number - to locate absent parents and to collect child support. 42 U.S.C. §666(A)(13(A) and its requirement of a Social Security number on the driver's license application, thus implementing this public policy, has been upheld as constitutional.¹⁵ Further, 42 U.S.C. §405(c)(2)(C)(i) leaves no room for confusion on this issue:

It is the policy of the United States that any State (or political subdivision thereof) may, in the administration of any tax, general public assistance, driver's license, or motor vehicle registration law within its jurisdiction, utilize the social security account numbers issued by the Commissioner of Social Security for the purpose of establishing the identification of individuals affected by such law, and may require any individual who is or appears to be so affected to furnish to such State (or political subdivision thereof) or any agency thereof having administrative responsibility for the law involved, the social security account number (or numbers, if he has more than one such number) issued to him by the Commissioner of Social Security. [emphasis added]

Federal law is unequivocal: Plaintiff must provide a Social Security number to obtain a driver's license in Arizona.

The third issue is whether A.R.S. §28-3158(D)(5) is ambiguous, and whether it requires Plaintiff to put a Social Security number on the application. A.R.S. §28-3158(D)(5) states:

The application for an instruction permit or a driver license shall State the following:

1. A brief description of the applicant and any other identifying information required by the department.

¹⁴ Pub.L. No. 105-33 § 5536, 111 Stat 251 (codified as 42 U.S.C. § 666(a)(13) (2001)).

¹⁵ *Michigan Dept. of State v. U.S.*, 166 F.Supp.2d 1228, 1234, W.D.Mich. (2001).

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2002-092663

09/26/2003

2. Whether the applicant has been licensed, and if so, the type of license issued, when the license was issued and what state or country issued the license.
3. Whether the license was suspended or revoked or whether an application was ever refused, and if so, the date of and reason for the suspension, revocation or refusal.
4. If the applicant was never licensed, the applicant's last previous state or country of residence.
5. The social security number of the applicant unless the application is for a nonresident commercial driver license.
[emphasis added]

Plaintiff argues that the statute merely requires that the *application* contain a space for the Social Security number; it does not require that a person actually fill that part out. This is utter nonsense. While the literal language of the statute is important, it may not "lead to absurd results or an interpretation which is inconsistent with the intent of Congress."¹⁶ The intent of Congress, as discussed above, is to gather the Social Security numbers, not to merely provide a space on a driver's license application. There is nothing ambiguous about this statute. Again, Plaintiff must provide a Social Security number to obtain a driver's license in Arizona.

The final issue is whether requiring Plaintiff to obtain a Social Security number as a condition to obtain a driver's license, violates due process and equal protection, as an undue burden on the Plaintiff's religious beliefs and right to use the streets and highways in the State of Arizona. In *Miller v. Reed*,¹⁷ the court ruled that a state's denial of a driver's license for refusal of the applicant to provide his social security number did not violate the applicant's constitutional rights or religious freedoms. There is no fundamental "right to drive" [emphasis added].¹⁸

This court affirms the administrative agency's decision, for it was clearly supported by valid Federal and Arizona law, logic, and substantial competent evidence.

After a careful review of the record, I find supporting Arizona law and substantial competent evidence to affirm the decision of the administrative agency. It is worth noting that both parties submitted exceptionally well-written, well-organized memoranda.

¹⁶ *Walker*, 257 F.3d at 667.

¹⁷ 176 F.3d 1202, 163 A.L.R. Fed. 739, 99 Cal. Daily Op. Serv. 3882, 1999 Daily Journal D.A.R. 4962 (9th Cir.(Cal.) 1999); also see *Knapp v. Miller*, 165 Ariz. 527, 799 P.2d 868 (App. 1990).

¹⁸ *Id.*

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2002-092663

09/26/2003

IT IS ORDERED affirming the decision of the administrative agency - The Executive Hearing Office of the Arizona Department of Transportation.

IT IS FURTHER ORDERED DENYING all relief as requested by the Plaintiff in his complaint.

IT IS FURTHER ORDERED that counsel for the Defendant shall prepare and lodge a judgment consistent with this minute entry opinion no later than October 17, 2003.